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December 18, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington DC, 20554

94-129

Dear Ms. Dortch,

Please accept for filing the enclosed Petition of ComTech21, LLC for Approval of a request for a limited waiver of the Commission's Rules applicable to the submission of changes in a subscriber's preferred Carrier. I have enclosed an original and five (5) copies. Please file mark the extra copy and return it to me in the enclosed self-addressed, stamped envelope.

This Petition does not involve the merger of the two companies, but is limited to the transfer of customers from one company to another.

Please contact Sonja Johnson-Byers, Regulatory Compliance on 203-679-7290 with any questions or if you require additional information about this filing. Thank you for your assistance in this matter.

Sincerely,

Marie Marcarelli
Executive Vice President
ComTech21, LLC

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	CC Docket No. 94-129
Selection Changes Provisions)	
Of the Telecommunications Act of 1996)	
)	
ComTech21, LLC)	
Request for Waiver)	

PETITION FOR WAIVER

I. Introduction

ComTech21, LLC ("ComTech21" or "Petitioner") respectfully requests a limited waiver of the Commission's Rules, 47 C.F.R. §§ 64.1100 through 64.1190 and relevant Commission Orders applicable to the submission of changes in a subscriber's preferred carrier (collectively hereafter "Rules"). Specifically, ComTech21 seeks a waiver to the extent necessary to permit it to transfer the customers of Cybertel Communications Inc., to the Petitioner's customer base without first obtaining the customers' authorization and verification.¹

¹ The FCC's verification rules prohibit a telecommunications carrier from submitting a preferred carrier change order unless the carrier has obtained either (1) the subscriber's written letter of agency, (2) the subscriber's electronic verification via a toll-free telephone number used exclusively to verify subscriber carrier changes, or (3) the subscriber's oral authorization to submit the preferred carrier change order from an appropriately qualified independent third party that confirms and includes appropriate verification data – e.g., the subscriber's date of birth or social security number. 47 C.F.R. § 64.1150

As demonstrated herein, Petitioner fully satisfies the special circumstances required for a waiver of the Commission's rules as stated in *WAIT Radio v FCC*. Grant of the instant Petition therefore will serve the public interest.² Moreover, Petitioner's request for a waiver is substantially identical to waivers of these rules previously granted by the Commission to other carriers.³

II. Background

Petitioner currently provides resold interexchange and international telecommunications services to customers throughout the United States. ComTech21 is a Delaware limited liability corporation. ComTech21 is authorized to provide resold intrastate interexchange service in more than 48 states and international service under its Section 214 authority issued by the Commission.⁴

Pursuant to an agreement to be executed with Cybertel Communications, the parties intend to transfer customer accounts to the Petitioner. Petitioner may migrate up to approximately 488 customers, from Cybertel Communications to Petitioner. Unless the FCC grants this Petition, these customers' interexchange services may be interrupted or discounted at some point in the future, and the customer may be subject to higher rates.

² *WAIT Radio v FCC*, 418 F 2d 1153, 1159 (D C Cir 1969), *Northeast Cellular Telephone Co v FCC*, 897 F 2d 1164 (D C CIR 1990)

³ *See infra* note 6

⁴ *See* ITC-214-20000419 (granted effective June 7, 2000)

In accordance with the Commission's prior Orders in this docket, Petitioner will notify all of the affected 488 customers prior to their transfer to Petitioner, via a letter that states: (a) the customers will receive the same or better services and rates upon transfer to ComTech21; (b) they have the right to switch to the interexchange carrier of their choice, (c) Petitioner will reimburse a customer for any preferred interexchange carrier change charges incurred from the local exchange carrier ("LEC") if a customer decides to change his or her preferred interstate carrier within 30 days from the transfer date; and (d) customers may contact Petitioner via a toll-free number with any questions regarding the transfer.⁵ ComTech21 will also amend its FCC tariffs, if required, to include the applicable Cybertel Communications services and rates for these customers. After consummation of the sale, Petitioner will send another notification letter welcoming customers to Petitioner and reiterating statements (a) through (d) above. Sample notification letters are attached as Exhibit A to this Request for Waiver of the Commission's Rules.

III. Special Circumstances Exist to Grant the Instant Waiver Request

The FCC has authority to waive a rule if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. *WAIT Radio* at 1159; *Northeast Cellular Telephone Co.* at 1166. The Petitioner asserts that special circumstances exist for waiver of 47 C.F.R. §§ 64.1100 through 64.1190. First, a waiver of these rules will enable

⁵ See *infra* note 6.

Furthermore, the circumstances involved in the instant Petition are similar to those in which the Commission has previously found sufficient to justify a waiver of these rules for other carriers.⁶ Where: (1) an interexchange carrier has entered into an agreement to purchase assets, including the customer base, from another interexchange carrier, and (2) the purchasing carrier has pledged to notify the customers of the change in providers, and (3) waiver of the Commission's authorization and verification rules would permit a smooth transition between providers, without a loss of service or rates, the Commission has consistently found that the special circumstances exist warranting a waiver, and that grant of the waiver would serve the public interest.

IV. Conclusion

Petitioner respectfully requests that the Commission grant a limited waiver of the authorization and verification requirements of the Commission's Rules, 47 C.F.R. §§ 64.1100 through 64.1190, and relevant Orders to the extent necessary to permit the Petitioner to transfer selected customers of Cybertel Communications to the Petitioner's customer base without first obtaining the customers' authorization and verification. For the reasons stated herein, grant of this request for a waiver of the Commission's Rules is in the public interest.⁷

⁶ See Orders issued in *Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, International Exchange Commissions, Inc. Request for Waiver*, Order, CC Docket No. 94-129, granting waiver of the Commission's authorization and verification requirement to various carriers, including US West Communications, Inc. (DA 00-1690, rel. July 28, 2000) and Telephone USA of Wisconsin, LLC (DA 00-1679, rel. July 28, 2000).

⁷ See, e.g., *International Exchange Communications, Inc. Request for Waiver*, Order, CC Docket No. 94-129, DA 99-1549 (rel. Sept 10, 1999), *MCI WorldCom Inc. Request for waiver*, Order, CC Docket No. 94-129, DA 99-1819 (rel. Aug 6, 1999).

customers to continue to receive the same services and the same or better rates from Petitioner without a possible disruption in service. In addition, requiring Petitioner to obtain verifications from each of these approximately 488 customers before it can begin to provide them service may delay the transfer to Petitioner, interrupt customers' services, and preclude their ability to make interexchange and international calls.

Waiver of these rules will serve the public interest because all Cybertel Communications customers switched to Petitioner will receive prior notification of the change in carriers, be informed of their ability to select the interexchange carrier of their choice, be reimbursed for any preferred carrier change charges imposed by LECs, and be given a toll-free number to contact Petitioner with any questions regarding the transition. Moreover, after customers are switched to Petitioner, they will receive a second letter again informing them of this information. These letters will ensure that customers are informed of the process and that their rights are adequately protected. By granting the transfer of these customers via notification as described in this Petition, the Commission will ensure that the underlying policy goals of the carrier change rules are served in a more efficient fashion that will permit Petitioner to seamlessly transfer Cybertel Communications's customers to Petitioner without any disruption in service.

Respectfully Submitted,

By: Maria Marcarelli
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Date: 12/18/03